

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>RICHARD ATSMA</b> Facility ID#60565 Sioux County	ADMINISTRATIVE CONSENT ORDER  NO. 2008-AFO- <del>22</del>
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TO: Richard Atsma  
PO Box 197  
Granville, Iowa 51022

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Richard Atsma for the purpose of resolving the issues surrounding a manure discharge from the Atsma Dairy. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Brandon Miner, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand - Gateway North, Suite E17  
Spencer, Iowa 51301-2200  
Phone: (712) 262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Richard Atsma owns and operates a 2,700 head confined dairy operation located at 4626 490<sup>th</sup> Street, Granville, Iowa (Section 24, East Orange Township, Sioux County).

2. On August 20, 2007, the area of Mr. Atsma's facility received over two inches of rainfall. On August 21, 2007, DNR Field Office 3 received a complaint regarding dead fish in Deep Creek north of Remsen, Iowa. Brandon Miner and Cindy Martens from DNR Field Office 3 investigated the complaint, beginning on August 21, 2007 and concluding the investigation on August 22, 2007. DNR Fisheries began its investigation on August 22, 2007.

3. On August 21, 2007, Ms. Martens and Mr. Miner began the investigation at the County Road L14 bridge located northeast of Remsen. They noted approximately 12 dead fish at this location. From this location, Ms. Martens and Mr. Miner continued upstream on Deep Creek to the following locations:

Site #1: 140<sup>th</sup> Street Bridge. This location is approximately 2 miles northeast of the L14 bridge. Ms. Martens and Mr. Miner conducted field tests. The water was murky; however there were no dead fish observed at this location.

Site #2: Shamrock Avenue Bridge. Ms. Martens and Mr. Miner conducted field tests and collected laboratory samples. The water was murky; however there were no dead fish observed at this location.

Site #3: 120<sup>th</sup> Street Bridge. Ms. Martens and Mr. Miner conducted field tests. The water was very murky and one dead fish was observed at this location.

Site #4: 110<sup>th</sup> Street Bridge. Ms. Martens and Mr. Miner conducted field tests. The water was murky and six dead fish were observed at this location. Ms. Martens and Mr. Miner checked Deep Creek at the Plymouth County/Sioux County line on 100<sup>th</sup> Street and observed approximately 10 dead fish. Ms. Martens and Mr. Miner proceeded to the County Road L22 bridge located on Deep Creek. One dead fish was observed; however the water appeared to be cleaner than previously observed. Ms. Martens and Mr. Miner then followed Deep Creek to its headwaters in O'Brien County. Overall, the water was fairly clear and no dead fish were observed until they reached the 500<sup>th</sup> Street bridge between Nest Avenue and Monroe Avenue in O'Brien County. Approximately 20 dead fish were observed at this location, however, Mr. Miner and Ms. Martens observed that fish had been dead for several days and were in various stages of decay. Mr. Miner and Ms. Martens determined that the fish likely died in an unrelated event to the one that cause the dead fish observed downstream on Deep Creek.

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Site #5: 500<sup>th</sup> Street - Unnamed Tributary of Deep Creek. This location is southwest of Mr. Atsma's facility. Ms. Martens and Mr. Miner conducted field tests at this location.

Site #6: Runoff from the Atsma Facility. Mr. Miner and Ms. Martens proceeded to Mr. Atsma's facility to check for possible runoff to the stream. They observed a cut channel approximately 6-10 inches wide and deep from the silage piles and separated bedding flowing towards the north, through a grass waterway toward the stream. Runoff water was flowing down the waterway at the time of the inspection; however the presence of the cut channel indicated that runoff from the silage pile and separated solids piles had reached the creek in the past. At the time of the inspection there were no runoff controls in place to control the separated solids piles or the silage pile. Mr. Atsma did not obtain a construction permit prior to constructing the solids separator at his facility. Mr. Miner and Ms. Martens conducted field tests and collected laboratory samples.

Sites #7 and #8: Atsma Facility Waterway Entry and Upstream in an Unnamed Tributary of Deep Creek. Mr. Miner observed that the runoff water was not reaching the creek at the time, but that a cut channel was present indicating that runoff had flowed into the creek during recent rainfall events. Field tests were not conducted due to darkness; however, laboratory samples were collected.

Site #9: County Road L22 Bridge - Unnamed Tributary of Deep Creek. This location is downstream of Mr. Atsma's facility. Mr. Miner and Ms. Martens collected laboratory samples, but were unable to conduct field tests due to darkness.

4. On August 22, 2007, Ms. Martens and Mr. Miner continued the investigation. They checked the County Road L14 bridge and observed approximately 15 dead fish. Field tests were conducted at this location. Mr. Miner and Ms. Martens checked several bridges on Deep Creek downstream of the County Road L14 bridge, but only one dead fish was found. Mr. Miner and Ms. Martens stopped at a feedlot operation on County Road L14 northeast of Remsen and no runoff was observed from this feedlot. The investigation continued upstream of Mr. Atsma's facility.

Site #10: McKinley Avenue Bridge - Unnamed Tributary of Deep Creek. Ms. Martens and Mr. Miner collected laboratory samples at this location. From this location, Mr. Miner and Ms. Martens stopped at an open cattle and hog lot operation located west of Mr. Atsma's facility to check for runoff from the cattle and hog operation. Mr. Miner and Ms. Martens did not observe any runoff reaching the tributary or any cut channels from the open lots to the tributary.

Site #11: County Road L22 Bridge. This location is located upstream of where the unnamed tributary from Site #10 enters Deep Creek. Ms. Martens and Mr. Miner collected laboratory samples at this location. Mr. Miner and Ms. Martens received a

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telephone call from a residence located at 160<sup>th</sup> Street northeast of Remsen regarding many dead fish. Ms. Martens and Mr. Miner traveled to this location and observed more than 500 dead fish. A rock dam at this location appeared to have prevented most of the dead fish from flowing downstream any further.

Sites #12 and #13: Atsma Facility Silage Runoff and Separated Solids Runoff. At the time of this visit to the facility, Mr. Atsma had constructed a small Mr. Miner and Ms. Martens collected laboratory samples and conducted field tests at these locations.

Site #14: Cattle Feedlot Operation Runoff Water after leaving Basin. Mr. Miner and Ms. Martens drove upstream of Mr. Atsma's facility to check for other contamination sources. At Monroe Avenue, they observed open cattle lot runoff water from an open cattle feedlot. The runoff was flowing from the feedlot into a waterway west into an unnamed tributary of Deep Creek upstream of the dairy operation. Mr. Miner and Ms. Martens collected laboratory samples and conducted field tests from the runoff water flowing from the facility. Mr. Miner and Ms. Martens observed that the runoff water was dark in color and had a very strong manure smell.

Site #15: Monroe Avenue – Unnamed Tributary of Deep Creek. The location is where the runoff water from the cattle feedlot operation flowed into a culvert under Monroe Avenue. Mr. Miner and Ms. Martens collected laboratory samples at this location. They observed that the water was dark in color and had a strong manure smell.

Site #16: 480<sup>th</sup> Street – Unnamed Tributary Downstream of the Cattle Feedlot Operation. This location was the first bridge downstream from the cattle feedlot operation. Mr. Miner and Ms. Martens collected laboratory samples and conducted field tests at this location.

Site #17: Unnamed Tributary of the Unnamed Tributary of Deep Creek. This location is approximately ½ mile south of the cattle feedlot operation and is a tributary that flowed into the unnamed tributary of Deep Creek. This location is downstream of where cattle feedlot operation runoff flowed into the unnamed tributary of Deep Creek. Mr. Miner and Ms. Martens collected laboratory samples and conducted field tests at this location.

Site #18: 470<sup>th</sup> Street – Unnamed Tributary Upstream of the Cattle Feedlot Operation. Mr. Miner and Ms. Martens collected laboratory samples and conducted field tests at this location.

5. The results of the field tests and laboratory samples taken on August 21 and August 22, 2007 are as follows.

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The field tests indicated the following:

<b>Location</b>	<b>Ammonia (mg/L)</b>	<b>Temperature (°C)</b>	<b>pH</b>
Site #1	1.6	27	8.0
Site #2	5.0	28	7.9
Site #3	2.8	28	7.9
Site #4	1.4	28	8.0
Site #5	6.0	28	8.0
Site #6	25.0	18	8.3
Site #12	50.0 – 75.0	No Data	6.8
Site #13	150.00	No Data	7.5
Site #14	100.00 – 125.0	No Data	7.1
Site #16	1.2	20	8.0
Site #17	1.2	20	7.4
Site #18	1.0	19	7.7

The laboratory samples indicated the following:

<b>Location</b>	<b>Fecal Coliform (Col/100 mL)</b>	<b>Total Biochemical Oxygen Demand (mg/L)</b>	<b>Total Suspended Solids (mg/L)</b>	<b>Ammonia (mg/L)</b>	<b>E.Coli (Col.100m/L)</b>
Site #2	68,000	17	75	3.0	No Data
Site #6	480,000	110	180	15.0	No Data
Site #7	230,000	53	1,200	2.0	No Data
Site #8	260,000	13	96	1.5	No Data
Site #9	240,000	27	69	3.0	No Data
Site #10	22,000	3	14	0.78	18,000
Site #11	230	2	12	0.19	220
Site #12	15,000,000	3,000	540	68	99,000,000
Site #13	640,000	690	96	130	200,000
Site #14	85,000,000	2,700	14,000	120	82,000,000
Site #15	110,000,000	2,100	3,500	87	105,000,000
Site #16	34,000	4	21	0.84	26,000
Site #17	120,000	4	16	1.0	120,000
Site #18	3,600	4	170	0.21	3,600

6. On October 30, 2007, Richard Atsma was issued a Notice of Violation letter for the water quality and wastewater violations discovered during the DNR investigation on August 21 and August 22, 2007. Mr. Atsma was informed the matter was being referred for further enforcement.

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5. Richard Atsma shall pay a penalty of \$2,500.00 in accordance with the following payment plan:
- |                                 |                                  |
|---------------------------------|----------------------------------|
| \$212.00 due March 15, 2008 pd; | \$208.00 due September 15, 2008; |
| \$208.00 due April 15, 2008 pd; | \$208.00 due October 15, 2008;   |
| \$208.00 due May 15, 2008;      | \$208.00 due November 15, 2008;  |
| \$208.00 due June 15, 2008;     | \$208.00 due December 15, 2008;  |
| \$208.00 due July 15, 2008;     | \$208.00 due January 15, 2009;   |
| \$208.00 due August 15, 2008;   | \$208.00 due February 15, 2009.. |

**VI. PENALTY**

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$2,500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Mr. Atsma has gained an economic benefit by failing to construct proper runoff control structures to properly manage and control runoff water from the silage and separated solids pile. Mr. Atsma also gained an economic benefit by failing to obtain a construction permit for the installation of the solids separator. Therefore, \$500.00 is assessed for this factor

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. By constructing without a permit, the DNR was unable to review the plans prior to construction to verify compliance with the regulations. The violations cited in this administrative consent order threaten the integrity of the water quality program. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – Richard Atsma has the duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Atsma failed to construct and maintain manure control structures to contain the runoff at all times. Based on the above considerations, \$1,000.00 is assessed for this factor.

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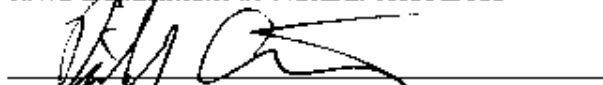
**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Richard Atsma. For that reason, Richard Atsma waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
RICHARD A. LEOPOLD  
Iowa Department of Natural Resources

  
RICHARD ATSMA

Dated this 30 day of  
June, 2008.

Dated this 20 day of  
May, 2008.

#60565; Kelli Book; Field Office 3; Gene Tinker; EPA; I.C.1, VIII.D.1.b, and VIII.A.1

**RECEIVED**  
**JUN 19 2008**